UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	No. 4:17-CR-00149-CDP
v.	)	
	)	
DARREN SMALL,	)	
	)	
Defendant.	)	

GOVERNMENT'S RESPONSE TO DEFENDANT'S MOTION FOR A DOWNWARD DEPARTURE

COMES NOW the United States of America, by and through Jeffrey B. Jensen, United States Attorney for the Eastern District of Missouri, and Reginald L. Harris, Assistant United States Attorney for said District, and for its Response to Defendant's Motion for Downward Departure, states as follows:

On August 3, 2017, Defendant Darren Small pled guilty to one count of Conspiracy to Commit Access Device Fraud in violation of 18 U.S.C. 1029(b)(2) and one count of Access Device Fraud in violation of 18 U.S.C. 1029(a)(2), all in connection with the theft of funds from the Kinloch Fire Protection District, which was carried out over the course of a period of more than three years. Defendant, who was the Chief of the Kinloch Fire Department and the Mayor of the City of Kinloch, committed the theft with his co-defendant and wife, Jayna Small, who was the President of the Board of the Kinloch Fire Protection District.

The defendant has one prior felony conviction for Criminal Non-Support, which he sustained in 2013, resulting in one criminal history point. Presentence Investigation Report ("PSR") ¶ 39. The defendant committed the instant offense while on probation for his prior conviction, resulting in two additional criminal history points. PSR ¶ 42. With a criminal history score of three, the defendant is in criminal history category II. PSR ¶ 43.

The Government opposes the defendant's motion for a downward departure because the defendant's criminal history category does not substantially over-represent the likelihood that the defendant will commit other crimes. Section 4A1.3(b)(1) of the Guidelines states that a downward departure may be warranted, "If reliable information indicates that the defendant's criminal history category substantially over-represents the seriousness of the defendant's criminal history or the likelihood that the defendant will commit other crimes." U.S.S.G. § 4A1.3(b)(1). No such reliable information has been demonstrated in this case to support a downward departure.

The defendant describes his prior conviction as arising from an *inability* to pay child support. However, the information in the record suggests otherwise. According to the PSR, at the time of the defendant's arrest for his non-support offense, his total arrearage from his support obligation exceeded 12 monthly payments. PSR ¶ 39. At the time of the offense, the defendant was gainfully employed as the Mayor of Kinloch. PSR ¶ 64. Thus, the reliable information suggests an unwillingness to pay, not an inability to pay.

The defendant describes his prior conviction as "a non-compliance criminal case." However, he received a felony conviction, which is an indication that this was more serious than a compliance matter. The defendant was convicted of a knowing failure to provide adequate support to his minor child. Although there are more serious offenses than nonpayment of child support, the level of the defendant's nonsupport may indicate a disregard for court orders.

For the foregoing reasons, the United States respectfully requests this honorable Court to deny the defendant's Motion for a Downward Departure.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on October 16, 2017, the foregoing was filed electronically with the Clerk of the Court to be served by operation of the Court's electronic filing system upon Daniel Juengel, the attorney for the defendant.

/s Reginald L. Harris
REGINALD L. HARRIS, #48939MO
Assistant United States Attorney